

**Informal Regulatory Stakeholder Engagement Process
Phase 2
Discussion Document – FAMLI Optional Self-Employed Plan (FAMLI OSEP)**

The Time to Care Act of 2022 provides that self-employed individuals (SEIs) can opt in to the FAMLI system, which shall be referred to as the FAMLI Optional Self-Employed Plan (OSEP). The Division seeks feedback from stakeholders on the questions presented on the following pages.

Comments can be submitted by offering oral remarks at the July 6th informal regulatory stakeholder meeting and/or by submitting written comments via email to FAMLI.policy@maryland.gov. The Division would prefer to receive written comments by July 10.

The following questions are being considered by the FAMLI Division. Below each question is a possible answer, which is intended to spark feedback and discussion.

1. How could a self-employed individual (SEI) be qualified to elect to participate in the Optional Self-employed Program (OSEP)?

A qualified self-employed individual could be defined as one who:

- i. Reports income to the IRS upon which the federal Self-Employment Tax is payable, as defined by the Self-Employment Contributions Act of 1954, as amended and incorporated into 26 U.S. Code § 1401 et seq., and
- ii. Is a resident of Maryland as defined in Tax-General § 10-101(k)(1)(i).

2. How might self-employment income be defined for the purposes of assessing mandatory contributions on participating SEIs?

- a. Income from self-employment could be defined as net earnings upon which the federal Self-Employment Tax is payable, as currently reportable on line 3 of the Schedule SE of Form 1040 as published by the IRS for tax year 2022.
- b. An SEI who has opted into the program would be required to report and pay the contribution on the full amount of income reportable on this line, up to the Social Security tax cap.

3. What might the process be for an SEI to elect coverage?

- a. A qualified self-employed individual may apply to elect coverage in the State Plan at any time.
- b. A notice to elect must be in writing and submitted online or in another approved way.
- c. SEIs could be required to provide the following documentation:
 - i. Proof of MD residency
 - ii. Proof of earning income as a self-employed individual, which could be established by furnishing:
 1. Proof of actual income as established by:
 - I. A copy of the most recently completed tax year's schedule SE and schedule 1040 filed with the IRS or
 - II. A receipt of payment of estimated tax to the IRS for the most recently completed calendar quarter, or
 2. Proof of intent to earn SE income, which could be established by showing a business license, a contract to perform work, or other documentation
- d. SEIs may be required to show proof of a reasonable expectation of earning the amount of self-employment income they declare as expecting to earn in the future, as demonstrated by providing a completed copy of worksheet 2-3 of publication 505 or a successor worksheet.
- e. The self-employed individual must agree to certain rules, which may include:

- i. Follow all rules and regulations promulgated by MDOL regulating participation of SEIs in the State Plan
 - ii. Pay mandatory contributions for a period of not less than three years and report all self-employment income for this period;
 - iii. Provide any information and documentation on the individual's taxable income from self-employment that the department deems necessary for the administration of the elective coverage; and
 - iv. Acknowledge conditions for termination of self-employed elective coverage established in this section, including, but not limited to the condition that coverage cannot be terminated until the coverage has been in effect for at least three years.
- f. An SEI may not meet any participation requirements through an equivalent private insurance plan (EPIP).

4. How often might a participating self-employed individual be required to report earnings? And what amounts would they report?

- a. Self-employed individuals who opt in may be required to make quarterly reports and payments on the same schedule as all employers in the state.
- b. Amounts reported quarterly could be calculated to equal the amount of the SEI's expected net income (profit) subject to the self-employment tax for the calendar year, as used in the computation of estimated tax as currently entered on line 3 of worksheet 2-3 of publication 505, divided by 4.
- c. At the end of every tax year, at tax time, the SEI would submit a copy of their completed 1040 and Schedule SE in order to reconcile amounts reported and contributions paid during the year. If the end-of-year tax reconciliation process shows lower net earnings than reported throughout the year, the SEI may receive a refund. If the reconciliation process shows higher net earnings than reported throughout the year, the SEI may owe make-up contributions.

5. At what rate would a self-employed individuals make contributions?

- a. Self-employed individuals pay the total contribution rate (the combined employer and employee portions).
- b. The tax base upon which the contribution is applied shall be computed for total SE income without regard to other forms of income. (I.e., all reportable self-employment income up to the Social Security tax cap is subject to the contribution rate regardless of whether the individual earned other income.)

6. What consequences might there be for non-payment of mandatory contributions or failure to report income?

- a. An SEI may be subject to the same penalties that apply to employers that fail to report or fail to pay mandatory contributions

- b. An SEI may be disallowed from participating in the program for a period of time.
- c. An SEI may be disallowed from receiving benefits if the SEI is not in “good standing” with the OSEP.

7. When would approved elective coverage become effective?

- a. The date the complete notice to elect participation was received by the Department.
- b. At this time, the SEI would be eligible to apply for benefits
- c. Also at this time, the SEI would begin paying contributions for the full current calendar quarter (at the end of the quarter)

8. How would benefits be calculated for a self-employed individual?

- a. Benefit amounts paid by the State Plan combine all reported wages in the base period when calculating a benefit amount. This means all self-employment income would be combined with any reported wages from employment before calculating the benefit.
- b. For an SEI that applies for benefits before participating in the program for a length of time that would be equivalent to the full benefit base period, it is possible that the applicant for benefits could be allowed to report past self-employment income that was earned before participating in the program and be charged unpaid contributions for those retroactive earnings.
- c. Alternatively, for an SEI that applies for benefits before participating in the program for a length of time that would be equivalent to the full benefit base period, it is possible that the benefit calculation would take into account only on income reported since the quarter in which the SEI opted in, but the full base period would still be used for calculation, including any quarters in the benefit base period before participation, which would be reported as quarters of \$0 earnings.
- d. In order to receive benefits from the State Plan, it is possible that an SEI would be required to be opted in and in good standing with the OSEP as of the date on which the leave is scheduled to start.
 - i. “In good standing” means there are no outstanding balances owed, no past-due quarterly reports, no past-due annual reconciliation reports, no uncollected benefits overpayments.

9. How might the annual reconciliation process to calculate net self-employment income (profit) work?

- a. SEIs might be required to reconcile net income (profit) at the end of every tax year at the conclusion of tax time for federal income tax purposes. This means SEIs will complete a worksheet showing the amount of income reported to MDOL every quarter during the completed tax year and also the final amount of Schedule SE income reported to the IRS. If the final reported amount is greater than the amount paid to MDOL during the course of the year, MDOL will issue a refund for the amount of

overpaid mandatory contributions. If the amount reported on the Schedule SE is less, the SEI will be required to make make-up payments.

- b. By April 30 of every year, the SEI will be required to provide a copy of the Schedule SE and schedule 1040 filed with the IRS at the conclusion of each tax year. After this date, MDOL could deem an SEI who has failed to following these reporting requirements as ineligible for benefits until the documents are received. An SEI may request an extension by showing proof of an approved filing extension granted by the IRS.

10. How might SEIs end their participation in the OSEP?

- a. In general, an SEI must remain in the program for 3 years from the date that began the calendar quarter in which the SEI opted in.
- b. An SEI can request to end participation early if the individuals proves:
 - i. Change of domicile to another state or
 - ii. The individual no longer earns or is expected to earn self-employed income for the duration of the remaining period of the 3-year required period.
- c. The SEI who ended participation early on the basis of b.ii. will not be required to file quarterly reports once participation ends, but the SEI will be required to file an annual reconciliation as usual in order to prove that SE income has ended. If the SEI returns to earning self-employment earnings and is a resident of Maryland during any period within the 3-year period, the SEI will be required to notify MDOL and resume participation in the program.
- d. A self-employed individual may end participation by filing a written notice online or in another method approved by the department.
 - i. A self-employed individual can end participation any time after participation has been in effect for three years or longer.
 - ii. The end of participation shall take effect at the end of the calendar quarter whose last date falls at least 30 days after the notice to end participation is received by the department.
- e. An SEI who requests to end participation after the expiration of the mandatory 3-year period may not be allowed to resume participation in the program for a 3-year period that begins on the first date of the calendar quarter that begins after the quarter in which the request to end participation became effective.